

*Controlling
misbehavior
in England,
1370–1600*

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Contents

<i>List of illustrations</i>	<i>page xi</i>
<i>List of tables and lists</i>	<i>xiii</i>
<i>Acknowledgements</i>	<i>xv</i>
<i>List of abbreviations</i>	<i>xviii</i>
 Introduction	 1
The debate over social regulation	1
The approach and arguments of this study	6
The past and present	16
 Part I The history of social regulation	
 1 The forms of control	 23
Mechanisms of social regulation	24
The lesser public courts	34
 2 Methodological underpinnings	 46
 3 Social regulation in England's smaller communities	 54
The Disharmony cluster	56
The Disorder cluster	68
The Poverty cluster	81
A special case: gaming	96
 4 Social concern in other contexts	 108
Legal settings	109
Almshouse regulations and Chancery petitions	116

Part II Factors that influenced social regulation

5	Some political considerations	127
	National vs. local responses	129
	"Political" activity at the community level	134
6	Social ecology I: "broad response" and "no response" communities	137
	Method and evidence	138
	Integration and discussion of the data	155
7	Social ecology II: analysis by type of offences reported	170
	Method and evidence	170
	Integration and discussion of the data	172
8	Ideological/religious influences	186
	The fundamental social concerns	187
	Fifteenth-century ideas about social wrongdoing	195
	Conceptions of a Christian society in the sixteenth century	200
	The social costs of aggressive regulation	206
	Conclusion: social regulation and the transition from medieval to early modern England	209
	<i>Appendices</i>	215
	<i>Bibliography</i>	265
	<i>Index</i>	279

Illustrations

Maps

2.1	The 255 places included in this study, showing type of community and region	<i>page 49</i>
6.1	“Broad response” and “no response” communities, 1420–99	156
6.2	“Broad response” and “no response” communities, 1500–59	163
6.3	“Broad response” and “no response” communities, 1560–99	165
7.1	Communities under observation in the 1420s–30s, showing type of response to wrongdoing	173
7.2	Communities under observation in the 1460s–70s, showing type of response to wrongdoing	174
7.3	Communities under observation in the 1520s–30s, showing type of response to wrongdoing	179
7.4	Communities under observation in the 1580s–90s, showing type of response to wrongdoing	182

Graphs

3.1	Percentage of courts under observation that reported offences in the Disharmony cluster	57
3.2	Courts that reported scolding: percentage of presentments by gender	59
3.3	Courts that reported eavesdropping/nightwalking: percentage of presentments by gender	66
3.4	Percentage of courts under observation that reported offences in the Disorder cluster	68

3.5	Courts that reported sexual misconduct: percentage of presentments by gender	73
3.6	Courts that reported disorderly alehouses: percentage of presentments by gender	75
3.7	Courts that reported being badly governed: percentage of presentments by gender	79
3.8	Percentage of courts under observation that reported offences in the Poverty cluster	82
3.9	Courts that reported hedgebreaking: percentage of presentments by gender	86
3.10	Courts that reported vagabonds/living idly: percentage of presentments by gender	89
3.11	Courts that reported receiving subtenants: percentage of presentments by gender	94
3.12	Percentage of courts under observation that reported gaming; and total, one or more types of all offences	97
3.13	Courts that reported gaming: percentage of presentments by gender	98

Graphs in Appendices

7.1a	Percentage of courts under observation that reported scolding, by type of community	253
7.1b	Percentage of courts under observation that reported eavesdropping/nightwalking, by type of community	253
7.1c	Percentage of courts under observation that reported sexual misconduct, by type of community	254
7.1d	Percentage of courts under observation that reported disorderly alehouses, by type of community	254
7.1e	Percentage of courts under observation that reported being badly governed, by type of community	255
7.1f	Percentage of courts under observation that reported hedgebreaking, by type of community	255
7.1g	Percentage of courts under observation that reported vagabonds/living idly, by type of community	256
7.1h	Percentage of courts under observation that reported receiving subtenants, by type of community	256
7.1i	Percentage of courts under observation that reported gaming, by type of community	257

Tables and lists

Tables

2.1	Number and type of courts under observation by duodecade, with median sizes of communities	<i>page</i> 50
6.1	Type of community and court by duodecade: "broad response" places	139
6.2	Type of community/court and region of the country: "broad response" and "no response" places	143
6.3	Lord of the manor: "broad response" and "no response" places (manor courts only)	146
6.4	Locational and economic factors: "broad response" and "no response" places (villages and market centers only)	148
6.5	Some measures of relative population and wealth: "broad response" and "no response" places (villages and market centers only)	153
6.6	Some measures of absolute size, wealth, and extent of poverty: "broad response" and "no response" places (villages and market centers only)	155

Tables and lists in Appendices

1.1	Urban records used to trace responses to misbehavior, 1370-1599	217
1.2	Church court records used to trace responses to misbehavior, 1435-1599	220
1.3	Sessions of the Peace records used to trace responses to misbehavior, 1351-1599	223
2.1	Records of the lesser public courts used in Chapters 3, 6, and 7	225

3.1	Percentage of all courts under observation that reported social wrongdoing, by type of offence and duodecade	239
3.2	Market centers whose "Assembly Books" were used in Chapter 3	240
6.1	List of "broad response" places	243
6.2	Region of the country by types of community: observed numbers vs. an even distribution	246
6.3	Eight continuum-based agrarian regions: (a) definition and arrangement of regions, and (b) data for the "broad response" and "no response" places (villages and market centers only)	247
6.4	Information about the tax records used in Tables 6.5-6.6 and Apps. 7.6-7.7	250
7.2	Type of community by type of response to wrongdoing, selected duodecades	258
7.3	Region of the country by type of response to wrongdoing, selected duodecades	259
7.4	Locational and economic factors by type of response to wrongdoing, selected duodecades (villages and market centers only)	260
7.5	Eight continuum-based agrarian regions by type of response to wrongdoing, selected duodecades (villages and market centers only)	261
7.6	Some measures of relative population and wealth by type of response to wrongdoing, selected duodecades (villages and market centers only)	262
7.7	Some measures of absolute size, wealth, and extent of poverty by type of response to wrongdoing, selected duodecades (villages and market centers only)	264

Introduction

The debate over social regulation

During the decades around 1600, many English communities were deeply troubled by social misbehavior.¹ In an attempt to maintain good order and enforce ethical conduct, local officials reported and punished sexual wrongdoing, excessive drinking, and the playing of illegal games, especially among the poor.² Sometimes they addressed verbal abuse known as “scolding,” described as a characteristically female offence.³ If the campaign for reform was led by fervent Puritans, it might include an attack upon older traditions of popular culture as well – customary village recreations like morris dancing and seasonal rituals

¹ For a thoughtful discussion of the historiography of social regulation, see Keith Wrightson’s “Postscript” to the paperback edition of his and Levine’s *Poverty and Piety*. This Introduction will not reassess the literature and interpretive problems he considers there.

² Works that discuss social regulation around 1600 and are not cited specifically below include Richardson, *Puritanism in North-West England*, Peter Clark, *English Provincial Society*, Rosen, “Winchester in Transition,” Wrightson, *English Society*, Hunt, *The Puritan Moment*, Underdown, *Revel, Riot, and Rebellion*, Kent, *The English Village Constable*, Mayhew, *Tudor Rye*, Levine and Wrightson, *The Making of an Industrial Society*, Marcombe, *English Small Town Life*, and Ingram, “Reformation of Manners.”

³ Scolds quarreled with others or spread malicious gossip. For recent studies of scolding and/or defamation, see Haigh, “Slander and the Church Courts,” de Bruyn, *Woman and the Devil*, ch. 5, Sharpe, “Defamation and Sexual Slander,” Gregory, “Slander Accusations and Social Control,” Underdown, “The Taming of the Scold,” Amussen, *An Ordered Society*, esp. p. 123, Boose, “Scolding Brides and Bridling Scolds,” Gowing, “Gender and the Language of Insult,” her “Language, Power and the Law,” and her *Domestic Dangers*, Ingram, “‘Scolding Women Cucked or Washed’,” and Hindle, “The Shaming of Margaret Knowsley.”

like May Day festivities.⁴ Efforts to contain misconduct were generally led by the male heads of well-established families of yeomen, the more prosperous craftsmen and traders, and occasionally some of the resident gentry. In addition to informal means of control, these men were able to employ the authority of the English legal system: they could include social wrongdoing among the problems they reported as jurors in their local courts, as lay parish officials in the church courts, or as local spokesmen summoned before county Sessions of the Peace. The punishments imposed upon offenders (a monetary fine, some form of public confinement *cum* ridicule, whipping, open confession of error, or religious excommunication) depended upon the nature of their offence and the type of court.

While historians agree that anxiety about misbehavior was widespread around 1600, the reasons for concern are not fully understood. One explanation suggests that attempts at "a reformation of manners" were influenced in some communities by the Puritan ideology of "the middling sort" who dominated local offices. Ardent Puritans, eager to create a truly Christian community on earth and to eliminate what they regarded as sinful cultural traditions, used the secular and ecclesiastical courts to impose their own, more demanding standards of moral behavior upon all members of their village or town. This argument, offered initially by Keith Wrightson in his 1973 Ph.D. thesis and supported by his and David Levine's pathbreaking study of the Essex village of Terling, has been illustrated more recently within both a southern county town and another small Essex community.⁵ An approach that emphasizes the impact of religious ideology upon social practices is part of a distinguished historiographic tradition: influenced by the work of Christopher Hill, it can be traced back to the venerable debate about the relationship between religious, social, and economic changes triggered by Max Weber and R. H. Tawney, who were themselves responding in part to the suggestions of Karl Marx.⁶ Unfortunately, a simplistic and more sweeping application of the proposed

⁴ Most fully, Hutton, *The Rise and Fall of Merry England*, esp. ch. 4; see also Ingram, "Ridings, Rough Music, and the 'Reform of Popular Culture'" and "From Reformation to Toleration." For continental parallels, see Muchembled, *Popular Culture and Elite Culture*, and Oestreich, *Strukturprobleme der frühen Neuzeit*.

⁵ Wrightson, "Puritan Reformation of Manners" and his and Levine's *Poverty and Piety; Underdown, Fire from Heaven*, and von Friedeburg, *Sündenzeit und sozialer Wandel*, which supercedes his "Reformation of Manners."

⁶ For Hill, see, e.g., *Society and Puritanism* and *Change and Continuity*; for the earlier debate, see Weber, *The Protestant Ethic and the Spirit of Capitalism* (New York, 1926, but originally issued as articles during the first two decades of the century), and Tawney, *Religion and the Rise of Capitalism*; Marx, *Das Kapital*.

importance of Puritanism has slipped into some historical thinking: social control around 1600 was caused by Puritanism, and hence regulation of conduct was a new phenomenon.

The precise role played by Puritan concerns as compared with other influences remains unclear. Of the scholars who have looked carefully at early modern responses to misbehavior, none has argued that Puritanism was in itself either a necessary or a sufficient cause of efforts to control wrongdoing. Wrightson and Levine, for example, note the importance of a cluster of demographic and economic changes in Terling that led to population pressure and severe problems with poverty as well as to cultural differentiation between middling families and the poor; these issues worked together with Puritan goals in shaping the pattern of social regulation.⁷ Conversely, Cynthia Herrup has shown that East Sussex experienced virtually no attempt to reform conduct during the Elizabethan and early Stuart periods despite a Puritan presence.⁸ Thanks to the studies of Martin Ingram we know that some smaller villages and towns were controlling misbehavior around 1600 even when Puritanism was not at work.⁹ Ingram points instead to other kinds of motives: a general Christian ethical sense about the need for responsible marriages and the evils of blatant sexual immorality; economic concerns about the creation of new households among the poor and the problem of bastard children, leading to higher parish taxes; and eagerness to contain disorderly or immoral conduct that might be disruptive of village harmony.

A number of studies have highlighted the distinctive features of the decades around 1600, thereby raising the possibility that vigorous social regulation was tied to those particular conditions. In practical terms, the 1590s experienced high population density, bad harvests and food shortages, acute poverty, unusual amounts of migration, disruption of normal marriage patterns, and potentially violent unrest.¹⁰ Such factors were likely to have increased the amount of wrongdoing and anxiety about it. So too were the cultural contrasts between local leaders and the poor visible in some communities by the end of the sixteenth century, manifested in differing levels of literacy and involvement in

⁷ Wrightson and Levine, *Poverty and Piety*. A similar combination of factors is visible in the village of Earls Colne, Essex (von Friedeburg, *Sündenzucht und sozialer Wandel*).

⁸ In *The Common Peace*.

⁹ "Religion, Communities and Moral Discipline" and *Church Courts, Sex and Marriage*, esp. pp. 166–7 and 233–7. Examples of Puritanism's variable influence upon social regulation are McIntosh, *A Community Transformed*, pp. 250–7, and Richard Dean Smith, "Social Reform in an Urban Context."

¹⁰ See, e.g., Walter and Schofield, eds., *Famine, Disease and the Social Order*.

popular culture.¹¹ Political and administrative developments likewise had important consequences for social regulation. James A. Sharpe has noted that efforts to contain misbehavior in the later Elizabethan and Jacobean periods were shaped by the presence of "an aggressive central and local governmental system" that was "anxious and (within limits) capable of intervening to alleviate" the demographic, economic, social, and cultural problems that threatened the stability of local communities.¹²

Evidence from medieval England, however, demonstrates that attempts to curtail wrongdoing had occurred in other periods and circumstances as well. Margaret Spufford, writing from the vantage-point of a Stuart historian but with information furnished by several medievalists, has suggested that the decades around 1300 witnessed control over the sexual misconduct of the poor in a fashion similar to that seen around 1600.¹³ After noting the resemblances between the demographic and economic conditions of the later thirteenth and the later sixteenth centuries and between the village elites of the two periods, Spufford looked at the role of the church courts in enforcing sexual morality and at the reports made to manor courts concerning *leyrwite* and *childwite*, the payments owed to the lord by villein women who committed fornication or bore bastard children. Arguing that medieval courts were attempting to regulate sexual misconduct, especially among poor women, three centuries before the early modern manifestation of concern, she concluded that social control could not be "in any way peculiar to puritanism."¹⁴ While her summary of what early modern historians have said about Puritanism as a motivating force for social regulation does not do full justice to the multifaceted nature of many of their studies, her discussion of the parallels in control over misconduct is nevertheless intriguing.

Pockets of social regulation have been documented in the fifteenth century too. My own previous research showed that between 1460 and 1500 local courts in some of England's bustling market centers tried energetically to control the same kinds of misbehavior and the same kinds of people as were the focus of attention around 1600.¹⁵ In wrestling with such problems as scolding, sexual misconduct, disorderly

¹¹ E.g., Cressy, *Literacy and the Social Order*, Wrightson, "Two Concepts of Order," and Hutton, *The Rise and Fall of Merry England*.

¹² Sharpe, *Crime in Early Modern England*, esp. p. 173.

¹³ "Puritanism and Social Control?" Her paper emphasizes the similarities between the periods but does not discuss the many significant contrasts. ¹⁴ *Ibid.*, p. 57.

¹⁵ McIntosh, "Local Change and Community Control" and *Autonomy and Community*, pp. 250-61.

alehouses, taking wood from hedges, and playing illegal games, leaders of these communities concentrated on the actions of the poor, young people, and newcomers to the community. Shannon McSheffrey has recently described strenuous control over behavior in London in the later decades of the fifteenth century; records of many other urban communities similarly document anxiety about social wrongdoing.¹⁶ Church courts were active too, dealing with sexual wrongdoing and verbal abuse.¹⁷

The relationship between earlier manifestations of control over misconduct and the outburst of concern around 1600 has not yet been established. Wrightson, in his "Postscript" to the 1995 paperback edition of the Terling study, acknowledges that medieval manor courts had undertaken some degree of social regulation, especially over sexual matters, but he stresses that early seventeenth-century control was unusual in two respects other than the contribution of Puritanism: an entirely different *scale* of concern as compared with the previous half-century, and the recourse made in the later period to "extra-parochial courts of Church and State" which had formerly been little used in social regulation.¹⁸ This raises another problem. If control over misconduct was handled by different types of courts in various periods, what appear to be changing levels of concern with wrongdoing over time may to some extent be artificial, deriving from an inconsistent use of records across the medieval and early modern eras.

Viewed more generally, our ability to trace the course of social regulation has been hampered by the structural definitions conventionally used in academic institutions when teaching and studying history. Lack of information about possible precedents for Elizabethan/Jacobean regulation derives in part from the unnatural chasm created by the continuing pedagogic use of 1485 as a cut-off date between periods, obscuring awareness of the continuities between later medieval and early modern England. Many historians of the sixteenth and seventeenth centuries received little training in the issues and sources important during the generations before Henry VII's accession, while medievalists are often poorly informed about developments after the fifteenth century. Another arbitrary division, the separation of insular from continental European history, contributed to a sense

¹⁶ In "Sexual Misconduct and the Regulation of Behaviour" (I am grateful to Dr. McSheffrey for a copy of this excellent study, which shows great sensitivity to language and individual circumstances); for other cities, see Chapter 1, section one below, and the records cited in Appendix 1.1.

¹⁷ E.g., Karras, *Common Women*, and Poos, "Sex, Lies, and the Church Courts."

¹⁸ Wrightson and Levine, *Poverty and Piety*, p. 201.

among some scholars that social regulation was a characteristically English phenomenon. We now have an excellent set of studies of German, French, Dutch, and Italian communities during the Reformation and Counter-Reformation periods showing that a willingness to control social behavior appeared at least sporadically on the continent during the generations before the Reformation as well as during the sixteenth and seventeenth centuries in Lutheran, Calvinist, and Catholic Reformation settings.¹⁹ Control over wrongdoing in England was without doubt part of a pan-European phenomenon.

The approach and arguments of this study

To answer the questions that surround English social regulation, we need a broader study – one that spans the transition between the medieval and early modern periods, examines developments throughout the country, and draws upon a diverse array of court records and other texts. In attempting to fill that need, this book explores four issues between 1370 and 1600: what were the forms through which misconduct could be addressed, what was the history of regulation during that period, what attitudes underlay efforts to control wrongdoing, and what factors influenced the amount of misbehavior and local responses to it? A starting date in the later fourteenth century allows us to establish a baseline of limited concern with misconduct during the first few generations after the 1348–9 plague.²⁰ By extending until 1600, the project provides a link into the better studied episodes of intense regulation during the late Elizabethan and Jacobean periods.²¹

¹⁹ E.g., Moeller, *Imperial Cities*, Ozment, *The Reformation in the Cities*, Burke, *Popular Culture*, Hoffman, *Church and Community*, Hsia, *Social Discipline*, Roper, *The Holy Household*, Schilling, *Civic Calvinism*, Mentzer, ed., *Sin and the Calvinists*, and Prodi and Penuti, eds., *Disciplina dell'anima*.

²⁰ Originally I hoped to start in the later thirteenth century so as to include the period of concern with misconduct around 1300, but this plan proved infeasible. The method used in this study requires that long runs of records be employed, covering as much of the full period as possible, but relatively few courts offered documents extending from the later thirteenth into the sixteenth centuries. If the starting date were moved to the later fourteenth century, a much wider array of documents became available.

²¹ My initial plan was to go into the seventeenth century, to trace the full history of the period of heightened concern around 1600, but the nature of the sources again intervened. Because the lesser local courts in many parts of the country no longer bore the brunt of responsibility for social regulation by 1600, their records reveal only part of the full picture. Yet attempting a systematic analysis of the now extensive records of the other jurisdictions throughout the country was too ambitious. Further, several other scholars are working on social regulation during the seventeenth century, drawing upon the wider range of records available by 1600, including contemporary books and

The first question to be investigated concerns the mechanisms through which social wrongdoing was addressed.²² What were these vehicles and how did they operate, how did their efforts interact with each other, and how did their roles change over time? Here we find that regulation formed part of a complex network designed to resolve conflict and curtail behaviors deemed socially harmful. As with personal disputes between individual local people, wrongdoing could be addressed through entirely informal means or through institutions like the pre-Reformation confessional, parish fraternities, urban guilds, and the developing system of poor relief. These units worked in tandem with more formal legal bodies to limit problems that seemed damaging to their communities. Four types of courts handled misconduct between 1370 and 1600: at the local level, the public courts held in England's villages, market centers, and hundreds (the administrative units into which most counties were divided), plus the legal bodies of the cities and larger towns; and at the intermediate level, the church courts operating within dioceses or archdeaconries, plus county Sessions of the Peace. Distribution of responsibility between these bodies shifted considerably over time: whereas the two kinds of local courts were assigned primary authority over all social offences except sexual misconduct during the fourteenth and earlier fifteenth centuries, the intermediate-level courts came to play a more important role across the later fifteenth and sixteenth centuries in some parts of the country. Here we encounter the issue of regional variation, a major theme within this study. Many of the lesser public courts in East Anglia, the South-east, and the lower Midlands were actively concerned with social regulation from the 1460s through the mid-sixteenth century, but during the following fifty years control over wrongdoing in those areas was largely transferred to the church courts and county Sessions of the Peace. In the North, West, and Southwest, by contrast, most lesser courts did not begin to address misconduct aggressively until the sixteenth century but remained actively engaged with such problems right through 1600. The rhetorical and in some cases practical influence of Parliament and the crown likewise grew from the 1530s onwards. Hence this work supports in broad terms the argument of Sharpe and Wrightson that institutions at the county and national level were more significant to social regulation around 1600 than they had been previ-

pamphlets and the detailed depositions given before some of the church courts and a few of the Sessions. (See, e.g., Ingram, "'Scolding Women Cucked or Washed'" and Gowing, *Domestic Dangers*.)

²² Because the rest of this section summarizes the detailed discussion in subsequent chapters, references will not be provided here.

ously. Yet it modifies that assessment in two respects: it establishes that this was the result of a slow shifting of power, and it adds a regional dimension to the analysis.

Of particular interest is the essential role played by the public courts convened in the country's smaller communities and by the jurors within them. In these little known institutions, established residents of middling status were sworn onto "presentment juries" to report about problems that affected the well-being of their community and to determine appropriate penalties.²³ The jurors were neither powerful and highly educated men nor the landless poor but rather yeomen, husbandmen, and local craftsmen and traders. Further, the same kinds of men were likely to serve as churchwardens in their parish, responsible for notifying the ecclesiastical courts about certain kinds of social wrongdoing, and as jurors or constables summoned before county Sessions of the Peace. They thus wielded considerable discretionary power through their decisions about which particular offences and offenders to report and which courts to use in addressing problems.

A second goal of this project is to determine the history of concern with wrongdoing between 1370 and 1600. To do so, reports of misconduct were analyzed from 267 public courts held in 255 villages, market centers, and hundreds.²⁴ These courts offer long chronological runs of records from communities distributed throughout England, permitting systematic assessment across our period. Only those instances of misbehavior that came to the attention of the courts through the unanimous reports of presentment juries are included in the study, for issues raised in private suits between parties may reflect individual problems rather than more widely held community concerns. It must be emphasized that these records do not allow us to distinguish between objective changes in the level of social wrongdoing within a given community and shifting attitudes on the part of the jurors towards whatever misdeeds did occur. Thus, if we observe that a particular court started to report sexual wrongdoing for the first time during the 1460s, we cannot tell whether such misbehavior was only now beginning to occur, perhaps due in part to the arrival of immigrants with different standards of conduct, or whether established local families had become more wor-

²³ "Middling" as used here with reference to the socio-economic range of local communities differs from the higher level implied by that word in most of the articles in *The Middling Sort of People* (ed. Barry and Brooks). The occupational terms below apply primarily to the sixteenth century; during the medieval period, such men came from the central and upper ranks of the peasantry.

²⁴ These places all had fewer than c. 3,000 inhabitants. For how the courts were selected and the data analyzed, see Chapter 2 below.

ried about sexual issues and therefore decided to mention to the court problems which in the past they would have overlooked. In most cases both factors were probably at work, but only detailed local studies can sort out the relative contribution of each.²⁵

Conduct regarded as socially harmful or disruptive by jurors has been classified here into eleven offences, ten of which are grouped for analytic convenience into clusters based upon the goals or anxieties that underlay them. The Disharmony cluster contains three offences often said in local records to be damaging to local harmony, goodwill, and peaceful relations between neighbors. Verbal misconduct known as "scolding" could take the form either of argumentative, quarrelsome speech or of malicious/untrue statements made behind another person's back. Eavesdropping, as its name implies, involved standing outside the walls of a house to listen to what was being said within. Nightwalkers wandered around after dark with no obvious reason for being out and hence were suspected of ill intent. A second grouping has been labeled the Disorder cluster, for its offences were commonly described as violating order, control, and discipline. This set includes sexual misconduct, unruly alehouses, and a set of imprecise charges in which a person was said to be of bad governance, suspicious life, or evil reputation. The third cluster revolves around the social problems that stemmed from poverty. While many local people continued to assist the needy in traditional charitable fashion or helped the deserving poor through the developing institutions of formal poor relief, a growing number of community leaders in the later fifteenth and sixteenth centuries decided to tackle the undesirable consequences of poverty through

²⁵ The closest we can come to an objective measure comes from information about bastardy, which presumably provides some reflection of the amount of sexual activity outside marriage. Adair's detailed analysis of illegitimacy rates by region indicates that between 1538 and 1599 the western part of the country had generally higher bastardy rates than did the East; the peak seen in the northwestern counties was roughly three times that found in the Southeast (*Courtship, Illegitimacy and Marriage*, figs. and tables 2.2-2.7). (I am grateful to Dr. Adair for a copy of his Ph.D. thesis and for detailed county figures.) If presentments for sexual misconduct in the 267 local courts studied here are grouped into the same regions used by Adair, we find that the Northwest did indeed demonstrate more attention to this issue than did the Southeast between 1540 and 1599, but the contrast is far less than in the bastardy rates. Adair's study shows that the stigma associated with extra-marital births was less in the North and West than in the South and East, due to differing definitions of betrothal and marriage; this may explain why regional contrasts in presentments concerning sexual wrongdoing are more muted than the bastardy levels might imply. Conversely, the apparent regional difference seen here may be influenced by the fact that the lesser public courts remained more active during the late sixteenth century in the Northwest than in the Southeast.

the courts. The Poverty cluster consists of taking wood from common hedges for use as fuel, called "hedgebreaking," feeding or sheltering vagabonds, refusing to work if poor, or allowing subtenants to move into one's holding.

These ten forms of behavior were chosen precisely because they were not expressly against the law or at least were not assigned to the lesser public courts for correction. The freedom of the jurors in dealing with such issues may be contrasted with those illegal actions which juries were required to report as part of the common law's nationwide system for maintaining the peace (like physical assaults, theft, or rape) and those which were indisputable crimes in the eyes of the church – and later the state (like witchcraft). While personal and local factors of course shaped jurors' decisions even in the latter areas, they were definitely *supposed* to report the more serious offences, whereas they had a choice about whether or not to prosecute social wrongdoing. A report about misbehavior therefore presupposes genuine concern among community leaders, providing a glimpse into how misbehavior was constructed. To examine the impact of explicit illegality upon local court reactions, a final issue was added to the list as a special case: playing any of a wide range of games proscribed by Parliamentary legislation.

Quantitative analysis of how many of these eleven offences were reported to local courts over time reveals a gradual rise in concern between the late fourteenth century and the end of the sixteenth. During the baseline period of 1370–99, only 14 percent of the lesser courts under observation reported any types of wrongdoing, but by the 1460s–70s the figure had risen markedly to 40 percent. (Duodecades are used as the chronological unit of analysis from 1400 onwards.) This evidence supports previous suggestions that social regulation was a serious concern within certain settings during the later fifteenth century. In the 1520s–30s the proportion of courts that addressed misbehavior climbed to 54 percent before reaching a peak of 59 percent in the 1580s–90s. Even when we add to this pattern the increasing contribution of the intermediate courts to controlling misconduct during the Elizabethan period, it is difficult to conclude that vigorous regulation around 1600 was a new phenomenon, altogether different in scale from what had come before.

If the evidence is broken down by cluster – by the type of concern that led to court action, interesting chronological variations emerge. Offences in the Disharmony cluster (scolding, eavesdropping, and night-walking) were reported to the local courts at a fairly consistent rate between the 1420s–30s and the 1520s–30s, dropping somewhat there-